THE ATTORNEY GENERAL OF TEXAS

September 29, 1987

JIM MATTOX
ATTORNEY GENERAL

Mr. Joe L. McCormick
Executive Director
Texas Guaranteed Student
Loan Corporation
P. O. Box 15996
Austin, Texas 78761

Open Records Decision No. 480

Re: Whether Open Records Act, article 6252-17a, V.T.C.S., authorizes Guaranteed Student Loan Corporation to withhold information concerning student loans

Dear Mr. McCormick:

The Texas Guaranteed Student Loan Corporation [hereinafter "Corporation"] received a request, submitted under the Open Records Act, article 6252-17a, V.T.C.S., for the following information:

> 1. Names of students who have received and defaulted on loans during the last 18 months issued by the Texas Guaranteed Student Loan Corp. to attend Eason's Institute of Technology in San Antonio, Texas. That 18 month period would be Dec. 1985 to May 1987;
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> 2. addresses and telephone numbers for those students mentioned above;
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> 3. dates of attendance -- date enrolled and date graduated or dropped out -- and whether the student dropped out;
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> 4. amount of loan and status of loan;
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> 5. lender who issued the loan, and institution that now holds it.

You ask if sections 3(a)(14) and 14(e) of the act authorize the Corporation to deny this request.[1] Section 3(a)(14) excepts from required disclosure

> student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, that student's parent, legal guardian, or spouse or a person conducting a child abuse investigation required by Section 34.05, Family Code.

Section 14(e) provides:

> Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

Section 3(a)(14) applies to "student records" at certain "educational institutions." Section 14(e) applies to "education records" of "any educational agency or institution." Thus, the threshold issue in this instance is whether the Corporation is an "educational agency or institution."

In Open Records Decision No. 427 (1985), we considered whether the Police Academy of the city of Houston is an educational institution subject to sections 3(a)(14) and 14(e). The Academy is an extension of the Houston Community College and of Sam Houston State University, which receive state and federal funds. The decision stated:

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1. The Corporation has previously been held to be subject to the Open Records Act. Attorney General Opinion MW-295 (1981).

The Open Records Act does not define 'educational institution,' section 3(a)(14), or 'educational agency or institution,' section 14(e). Moreover, the Buckley Amendment sheds no light on the meaning of these terms; it merely states that an 'educational agency or institution' is 'any public or private agency or institution which is the recipient of funds under any applicable program.' . . . Because these terms are not defined in the applicable statutes, they must be given their ordinary and popular meaning. . . .

We have examined several cases in which the meaning of 'education' and 'educational institution' is at issue. Almost without exception these cases define 'education' expansively. See, e.g., Girard School District v. Pittenger, 392 A.2d 261, 264 (Pa. 1978) ('education' is impartation or acquisition of knowledge, skill or discipline of character); Harbor Schools, Inc. v. Board of Appeals of Haverhill, 366 N.E.2d 764, 767 (Mass. App. 1977) ('education' a broad, comprehensive term involving process of developing and training mental, moral, or physical powers and faculties). They also establish that in deciding whether an institution is an 'educational institution' courts will ask, among other things, whether education is the primary function of the institution. See, e.g., LaManna v. Electrical Workers, Local Union No. 474 of International Brotherhood of Electrical Workers, AFL-CIO, 518 S.W.2d 348 (Tenn. 1974) (where union's educational services incidental, union not an 'educational institution' entitled to property tax exemption); Melcannon v. State Board of Education, 195 So.2d 289 (La. 1967) ('educational institution' within meaning of state constitution, is permanent, state-controlled establishment located on state property and sustained by state appropriations to provide education through staff of professionally trained educators); Birmingham Business College v. Whetstone, 82 So.2d 539 (Ala. 1955) (business college,

> which offered courses in business law, accounting and secretarial capacities, was 'educational institution' within meaning of state constitution and laws).
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> Based on this array of cases decided in a similar manner by courts throughout the country, we conclude that a Texas court faced with the question of whether the city of Houston Police Academy is an 'educational institution' within the meaning of the Open Records Act would answer in the affirmative. The exclusive purpose of the academy is to provide the training and skills necessary to be an effective and competent police officer. The academy is an extention of both a community college and a state university. It receives state funds. Cadets who complete its training course receive 18 hours of college credit.

Applying these standards to the facts of this case, we conclude that the Corporation is not an "educational agency or institution." The information which you submitted to us contains the following discussion of the Corporation's mission:

> The Guaranteed Student Loan Program, under which the Texas Guaranteed Student Loan Corporation (TGSLC) operates, was established by Congress in 1965 as a means of making loans available to students attending colleges, universities, and postsecondary educational vocational schools.
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> The [Corporation] was established as a public nonprofit corporation by the Texas Legislature in 1979. The mission and purpose of the Corporation, as expressed in its enabling legislation and mission statement adopted by the Board of Directors, is to increase accessibility to postsecondary educational opportunities for Texas students by removing financial barriers caused by the increasing cost of pursuing a higher education. TGSLC carries out this activity by administering the largest student financial assistance program in the state.

> TGSLC's primary responsibility is to guarantee the repayment of principal and accrued interest on student loans to private lenders for each eligible student loan. TGSLC is responsible for processing loans submitted for guarantee, issuing loan guarantees, providing collection assistance to lenders for delinquent loans, paying lender claims for loans in default, and collecting loans on which default claims have been paid. TGSLC also informs lenders of the program requirements, encourages lender participation and provides servicing and origination of loans.

It is clear from this description that, although the work of the Corporation is certainly linked to education, the Corporation is not itself an educational agency or institution within the meaning commonly ascribed to these terms. The primary function of the Corporation is not to develop or train mental, moral, or physical powers and facilities or to impart knowledge or skills; on the contrary, the Corporation is exclusively in the business of facilitating the acquisition and guaranteeing the repayment of student loans. Because the Corporation cannot reasonably be characterized as an educational agency or institution, sections 3(a)(14) and 14(e) have no bearing on the availability of the information requested in this instance.

This does not, however, end our discussion. You have claimed only sections 3(a)(14) and 14(e), and the general policy of this office is not to raise exceptions to the Open Records Act on behalf of governmental bodies seeking to withhold information. Open Records Decision Nos. 444 (1986), 325 (1982). We will, however, invoke section 3(a)(1) of the act, which protects information deemed confidential by constitutional or statutory law or by judicial decision, when necessary to protect third-party interests. Open Records Decision No. 325 (1982). The facts of this case raise a privacy issue which must be addressed.

In Open Records Decision No. 455 (1987), we discussed the individual interest, protected by the Fourteenth Amendment to the United States Constitution, in maintaining the confidentiality of certain personal information. This interest, safeguarded by what is commonly known as constitutional "disclosural" privacy, arises in a variety

of contexts, one of which involves financial information. Because this request seeks information regarding the financial affairs of certain students, it implicates disclosural privacy.

Several of the cases discussed in Open Records Decision No. 455 involved the availability of personal financial information. In Plante v. Gonzalez, 575 F.2d 1119 (5th Cir. 1978), for example, the court considered whether a Florida "sunshine law" requiring elected officials to disclose detailed information about their personal finances violated the officials' privacy right. After acknowledging that personal financial information is within the scope of this right, the court considered the standard to apply to determine the constitutionality of the statute. It said:

> Financial privacy is a matter of serious concern, deserving strong protection. The public interests supporting public disclosure for these elected officials are even stronger. We join the majority of courts considering the matter and conclude that mandatory financial disclosure for elected officials is constitutional.

575 F.2d at 1136. The court thus held that information concerning personal matters may be publicly disclosed without violating the Constitution if a legitimate public interest warrants disclosure. The same theme has been echoed in similar cases. See, e.g., Fadjo v. Coon, 633 F.2d 1172, 1175 (5th Cir. 1981) (disclosure of personal information permissible where government demonstrates legitimate state interest which outweighs privacy interest); Ramie v. City of Hedwig Village, Texas, 765 F.2d 490, 492 (5th Cir. 1985) (disclosure of private facts impermissible if public has no legitimate and proper concern with such information).

In this instance, the requested information concerns students rather than public officers or employees. The fact that requested information concerns private citizens rather than public officials has a bearing on the extent to which it is protected by disclosural privacy. Plante v. Gonzalez, supra, at 1135. Nevertheless, we conclude that disclosural privacy does not protect the information at issue here. For one thing, this financial information is not completely "personal," inasmuch as it involves student loans obtained from a public, non-profit

corporation backed by public funds. In contrast, the court in Plante dealt with a broad range of financial information. Here, we are considering a single item of information relating to the relationship of a student with a governmental body. To the extent that this information can be characterized as personal, moreover, we believe the public has a legitimate interest in it, given the fact that public funds are directly involved. In many respects, this situation is analogous to that involved in Open Records Decision No. 443 (1986), which held that the city of Electra was required to grant a citizen's request for access to the city's utility bill ledgers. There we held as follows:

> The debt to which the Trammell case [cited in the decision] referred, however, was a purely private one involving only the debtor and the creditor. This prompted the court's conclusion that 'the contents of the notice were not matters of public interest, but concerned only the creditor and the debtor.' In this instance, by contrast, anyone who is delinquent in his utility payments to the city of Electra owes a debt to a governmental entity rather than to a private party. Although the public may have no legitimate interest in private debts, we believe that it has a genuine interest in knowing who owes money to the city, as this information will enable the public to gain some insight into the manner in which the city handles the task of revenue collection and may spur the public to attempt to influence city officials to perform that task differently.

Just as the fact that a public debt was involved was critical to the outcome in Open Records Decision No. 443, we believe that the public nature of the transactions at issue here requires the conclusion that whatever privacy interest is implicated by this information is outweighed by the public's right to be apprised of the manner in which its funds are being handled.

This request does not involve only financial information. We have held, however, that there is no privacy interest in home addresses and telephone numbers. Open Records Decision Nos. 455 (1987), 169 (1977). We held that there is also no privacy interest in the dates on

which students attended school, whether they graduated or dropped out, and the name of the lender who issued a loan and the institution that now holds it. Accordingly, none of the information requested in this instance is protected by constitutional privacy.

S U M M A R Y

The Guaranteed Student Loan Corporation is not an educational agency or institution; accordingly, sections 3(a)(14) and 14(e) of the Open Records Act do not permit it to withhold information concerning student loans guaranteed by the Corporation. Constitutional disclosural privacy, applied through section 3(a)(1) of the act, also does not embrace the requested information.

Very truly yours,

Jim Mattox

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